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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1993

Addendum

MONACO

[14 March 1994]

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Paragraphs Page

GE.94-12780 (E)

1. The Constitution of 17 December 1962 solemnly affirms its commitment to the values upheld by the Convention and declares in particular:

> Article 2, paragraph 2: "The Principality is a State ruled by law and devoted to respect for fundamental liberties and rights";
>
> Article 19, paragraph 1: "Individual freedom and security are guaranteed. No one may be prosecuted except in cases provided for by law, before legally appointed judges and in the manner prescribed by law";
>
> Article 20, paragraph 1: "No penalty may be introduced or applied except by law";
>
> Article 20, paragraph 2: "Criminal law must ensure respect for human personality and dignity. No one may be subjected to cruel, inhuman or degrading treatment".

These fundamental principles are implemented in the Monegasque Penal Code and Code of Penal Procedure.

2. In accordance with the terms of the Convention (arts. 1 and 16), criminal legislation prohibits any "public official or other person acting in an official capacity" from engaging in acts of torture, i.e. acts whereby "severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him ... information or a confession, punishing him for an act he ... has committed or is suspected of having committed, or intimidating or coercing him ..., or for any reason based on discrimination of any kind", or from engaging in "other acts of cruel, inhuman or degrading treatment or punishment".

3. Book III, Chapter II, of the Penal Code, entitled "Infringements of freedom", contains the following provisions:

(a) Article 72 prescribes civic dishonour for any public official or government agent who has ordered or committed any arbitrary act that constitutes an infringement of either individual freedom or of the laws and institutions of the Principality;

(b) Article 74 punishes by civic dishonour any public official responsible for the administrative or judicial police who refuses to register or neglects to act on a lawful complaint reporting any arbitrary detention and who is unable to justify his failure to report it to higher authority.

4. Chapter III, paragraph V, of the Penal Code, entitled "Abuse of authority", contains the following provisions:

(a) Article 123 lays down a prison sentence for any administrative or judicial official, judicial or police officer, or officer or agent of the forces of law and order guilty of unlawful entry into the home;

(b) Articles 126 and 137 lay down severer penalties for crimes or offences committed by a civil servant, public official, officer responsible

for enforcing judicial warrants or decisions, commander in chief or officer of lower rank in the forces of law and order who, in the course of his duties or in connection with them, commits or orders violence to be committed against individuals; the crimes and offences against individuals that may degenerate into acts of torture or constitute cruel treatment are the following: homicide, murder, poisoning, death threats or threats of physical violence, the various forms of deliberately striking and wounding (depending on whether they lead to an individual being incapacitated from work, mutilation, amputation, blindness, a serious permanent handicap or death), breaches of morals, unlawful arrest and abduction, which may be associated with threats of death or torture.

5. In addition to the perpetrators of these crimes, any persons who by gift, promise, threat or abuse of authority or power cause such acts to be committed or issue instructions for their committal, persons who have obtained the instruments used to commit them, and persons who have aided or abetted the perpetrators in preparing or carrying out their act are also liable to punishment for complicity (Penal Code, arts. 41 and 42).

6. Monegasque penal procedure establishes strict respect for fundamental rights and freedoms, and more specifically for the rights of the defence. Should a public official be accused of having committed the crimes and offences described above, they are immediately investigated, as appropriate pursuant to a complaint by and at the initiative of any person who considers himself a victim thereof, prosecuted in accordance with the law and tried by the ordinary courts (criminal court, correctional court), with a constant concern to ensure impartiality and verify the reliability of the evidence. The penalties handed down (basically imprisonment and a fine) exclude physical punishment and any cruel, inhuman or degrading treatment.

7. Article 14 of the Convention requires any State party to ensure that the victim of an act of torture obtains redress and has an enforceable right to fair compensation. The Monegasque legal system provides for such compensation through a claim for damages against the perpetrator of the offence.

8. Article 8 of the Convention deals with extradition and stipulates that offences connected with torture are deemed to be included as extraditable offences in any extradition treaty existing between States parties or, in the absence of a treaty, recognized as extraditable offences. These provisions are identical to those contained in the Geneva Protocol of 25 March 1972 amending the Single Convention on Narcotic Drugs of 30 March 1961, to which Monaco has acceded.

9. To conclude, current Monegasque legislation is manifestly inspired by the same ideals regarding the dignity of the human person and universal and effective respect for human rights and fundamental freedoms as those set out in the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

10. The implementation of these precepts poses no particular difficulties in the Principality.

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COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial report of States Parties due in 1993

Addendum

CZECH REPUBLIC

[18 April 1994]

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I. GENERAL INFORMATION

A. Introduction

1. The Czech Republic came into existence on 1 January 1993 as a result of the dissolution of the Czech and Slovak Federal Republic into two separate and independent States. On 19 January 1993 it was accepted as a member of the United Nations and succeeded to all the human rights documents binding for the former Czechoslovak State. On 8 September 1986, the then Czechoslovak Socialist Republic signed the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as "the Convention") and its instrument of ratification was submitted to the United Nations Secretary-General on 7 July 1988. The Convention entered into force on 6 August 1988 and was published in the Official Journal under No. 143/1988. The initial report of the Czech and Slovak Federal Republic was published in document CAT/C/7/Add.12. Due to the establishment of the Czech Republic, the former Czechoslovak legal system is currently being taken over and innovated with the aim of achieving the compatibility of domestic legislation with the international commitments of the State.

B. Other treaty commitments in this field

2. Torture and other cruel, inhuman or degrading treatment or punishment is considered in the Czech Republic to be one of the grossest violations of human rights and fundamental freedoms. The Czech Republic expressed its consistent support of this principle not only by ratifying the Convention but also by fulfilling its obligations under the Universal Declaration of Human Rights and under other international human rights treaties.

3. Since 1976, the Czech Republic has been a party to the International Covenant on Civil and Political Rights. The Covenant was published in the Official Journal under No. 120/1976. Since 1991, the Czech Republic has also been a party to the Optional Protocol to the International Covenant on Civil and Political Rights, published in the Official Journal under No. 169/1991.

4. The Czech Republic is furthermore a party to other multilateral treaties in this field, e.g. to the Geneva Conventions of 12 August 1949 for the protection of war victims, the 1968 Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity, the 1979 International Convention against the Taking of Hostages, the 1989 Convention on the Rights of the Child, etc.

5. Since 18 March 1992, the Czech Republic as a successor of the Czech and Slovak Federal Republic has been a party to the 1950 European Convention on the Protection of Human Rights and Fundamental Freedoms, as amended by Protocol Nos. 3, 5 and 8, and other Additional Protocols thereto, including Protocol No. 6 on the abolition of capital punishment. The Czech Republic has not so far become a party to the Second Optional Protocol to the International Covenant on Civil and Political Rights concerning the abolition of capital punishment, nor to the European Convention on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, signed by the former Czech and Slovak Federal Republic on 23 December 1992. The ratification of this Convention is, however, in preparation.

6. The Czech Republic is a party to several dozen bilateral treaties on legal assistance in all criminal cases and on extradition of criminals. The Czech Republic considered the general principles of international criminal law as a base in the process of concluding the treaties.

C. General legal framework

7. Since the end of 1991, when the initial report on the implementation of the Convention was defended in Geneva, the following legal regulations have been issued in the former Czech and Slovak Federal Republic and in the present Czech Republic:

- Act No. 140/1961, Criminal Code as amended by later provisions,
- Act No. 141/1961, Code of Criminal Procedure as amended by later provisions;
- Act No. 99/1963, Code of Civil Procedure as amended by later provisions;
- Act No. 40/1964, Civil Code as amended by later provisions;
- Act No. 59/1965 on the enforcement of prison sentences;
- Act No. 124/1992 on military police;
- Decree of the Ministry of the Interior No. 129/1992 on professional qualifications of police staff and their examination;
- Act No. 186/1992 on the official status of the staff of the police of the Czech Republic;
- Decree of the Ministry of Justice of the Czech Republic No. 247/1992 establishing the rules for the execution of custodial sentence in prisons of the Czech Republic;
- Act No. 279/1992 on some of the other preconditions for the performance of some functions filled by appointment or nomination of members of the staff of the police of the Czech Republic and members of the prison guard corps of the Czech Republic;
- Decree of the Ministry of the Interior of the Czech Republic No. 290/1992 implementing the Act on the police of the Czech Republic;
- Act No. 555/1992 on the prison service and court guards of the Czech Republic;
- Constitutional Act No. 1/1993, Constitution of the Czech Republic and the preceding constitutional acts on the dissolution of the Czech and Slovak Federal Republic;

- Resolution of the Presidium of the Czech National Council No. 2/1993 on the promulgation of the Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic;

- Act No. 182/1993 on the Constitutional Court;

- Act No. 283/1993 on the Public Prosecutor's Office;

- Act No. 293/1993 on the enforcement of custody;

- Act No. 294/1993 which amends and supplements Act No. 59/1965 on the enforcement of prison sentences as amended by later provisions.

8. The basic legal regulation providing protection against acts covered by the Convention is the Constitution of the Czech Republic including the Charter of Fundamental Rights and Freedoms promulgated by constitutional act on 9 January 1991 and adopted by a Resolution of the Presidium of the Czech National Council (Parliament of the Czech Republic) by Act No. 2/1993 on the promulgation of the Charter of Fundamental Rights and Freedoms as a part of the constitutional order of the Czech Republic. Article 2 of this act reads as follows:

> "International treaties on human rights and fundamental freedoms ratified and promulgated by the Czech and Slovak Federal Republic are universally binding on its territory and supersede its own laws."

9. Article 7 of this act states:

> "(1) Inviolability of the person and of privacy is guaranteed. It can be restricted only in cases specified by law.
>
> "(2) Nobody may be subjected to torture or to inhuman or degrading treatment or punishment."

10. The most serious attacks against the integrity of a person, his/her dignity and freedom of decision are viewed as criminal offences and as such they are punishable. The Criminal Code (Act No. 140/1961, as amended by subsequent regulations) thus represents the basic document of protection against all forms of violence as described under the term of "torture" in articles 1 and 16 of the Convention. The legal protection of the inviolability of a person permeates the entire Criminal Code since it is linked with the equality of all citizens, with their protection against generally dangerous acts and criminal acts relating to the exercise of the jurisdiction of State bodies and public officials.

11. On 10 November 1993 and with effect from 1 January 1994 an amendment to the Criminal Code was adopted (Act No. 290/1993). In the sense of the recommendation of the Committee against Torture and within the framework of the discussion concerning the initial report of the former Czech and Slovak Federal Republic on the implementation of the Convention, the amendment

embodies a new definition of the criminal act of "torture and other inhuman and cruel treatment" as section 259a of the Criminal Code. The section reads as follows:

> "(1) Whoever causes physical or mental suffering in connection with the performance of the jurisdiction of a State body or local authority or a court of justice by torture or other inhuman or cruel treatment shall be punished by imprisonment for a term of six months to three years.
>
> "(2) Whoever
>
> "(a) commits the act mentioned in paragraph 1 as a public official;
>
> "(b) commits the act together with at least two persons; or
>
> "(c) commits the act for a prolonged period of time;
>
> shall be punished by imprisonment for a term of one year to five years.
>
> "(3) Whoever causes serious bodily harm by the act mentioned in paragraph 1 shall be punished by imprisonment for a term of five to 10 years.
>
> "(4) Whoever causes death by the act mentioned in paragraph 1 shall be punished by imprisonment for a term of eight to 15 years."

12. The Code of Criminal Procedure (Act No. 141/1961, as amended by subsequent regulations) states in its section 2, paragraph 4, that the authorities acting in criminal proceedings shall act ex officio; they shall deal with criminal cases as expeditiously as possible and in doing so they shall fully respect the civil rights guaranteed by the Constitution. Section 52 provides for the manner of performing all procedural acts in criminal proceedings, that is also the acts performed prior to starting criminal prosecution. Section 52 reads as follows:

> "When performing procedural acts in criminal proceedings, the persons involved in the act shall be treated in accordance with the importance and educational purpose of criminal proceedings; their dignity and their constitutional rights shall at all times be respected."

13. Section 91, paragraph 1, provides for the interrogation of an accused. The text of this provision states:

> "An accused shall in no way be forced to make a statement or to confess and his dignity shall be respected in the course of the interrogation."

14. As in the case of the Criminal Code, the Code of Criminal Procedure has been substantially amended since the time of the submission of the initial report of the Czech and Slovak Federal Republic.

15. The inviolability of a person is also protected by the civil law. The provision of section 11 of the Civil Code (Act No. 40/1964) states explicitly:

> "A citizen has the right to the protection of his person, notably his life and health, civic honour, as well as his name and expressions of a personal nature."

16. Under the amended section 13 of the Civil Code a citizen has the right to court protection and the right to insist that unjustified restrictions of his right to protection of person be refrained from, that the consequences of such restrictions be remedied and that appropriate satisfaction be given, including the possibility of according the injured person a pecuniary compensation under certain conditions.

17. Section 13 of Act No. 40/1964 in the wording of Act No. 87/1990 by which the Civil Code has been amended and supplemented now reads as follows:

> "(1) A citizen has, in particular, the right to insist that the unjustified restriction of his/her right to protection of his/her person be refrained from, that the consequences of such infringements be removed and that the appropriate satisfaction be given to him/her.
>
> "(2) Should satisfaction provided to a citizen under paragraph 1 appear insufficient, notably on the grounds that his dignity or his prestige in society suffered considerable damage, the citizen also has the right to pecuniary compensation for such non-material damage.
>
> "(3) The extent of compensation under paragraph 2 shall be determined by a court taking into account the gravity of the damage and of the circumstances under which the infringement of the right has occurred."

18. The relevant provision is also embodied in other generally binding legal regulations. It concerns, for instance, the Act on the right to petition, the Act on health care, the Act on the periodical press and the mass media and also Decree No. 150/1958 on processing complaints, announcements and suggestions of employees.

19. The regulations providing for the activities of police, courts and the Public Prosecutor's Office contain not only the prohibition of torture and other similar acts listed in article 16 of the Convention but also a more general prohibition of coercion in the interrogation of the accused, the use of cruel and inhuman treatment or punishment and the obligation of these organs to respect the person of the accused (notably the above-mentioned section 91, paragraph 1, of the Criminal Code) and his/her human dignity. The execution of a penalty must in no way degrade human dignity (sect. 23, para. 2, of the Criminal Code). The amended Act on the execution of prison sentences No. 179/1990 states in its section 1, paragraph 2, that in the course of the execution of prison sentences the natural dignity of a human person must be respected and no cruel treatment, or treatment or punishment degrading human dignity, may be used. Further to this provision there is section 10, paragraph 1, of the Act stating that in the course of the execution of punishment only such civil rights of the convicted may be

restricted, the exercise of which would stand in contradiction to the purpose of the execution of the sentence (para. 1) or that cannot be exercised on account of the execution of the sentence.

20. With regard to a witness ("a third person" in the sense of article 1 of the Convention), the provision of section 52 of the Code of Criminal Procedure stipulates that in the performance of the procedural acts in criminal proceedings it is at all times necessary to respect the dignity of the person of the accused and the constitutional rights of the persons involved in the acts.

21. As far as the military sphere is concerned, the activities of the military police of the Army of the Czech Republic are subject to the above-mentioned Act No. 124/1992 and also to the Criminal Code and to the Code of Criminal Procedure.

22. The work of the prison guard corps is regulated by the above-mentioned Act on the prison guard corps and court guards of the Czech Republic. Section 6 of this Act imposes upon the members of the prison guard corps "the obligation to treat the prisoners serving their sentences in a serious and decisive manner, to respect their rights, to prevent cruel treatment or treatment degrading human dignity of these persons or any such treatment among themselves and to assist the fulfilment of the purpose of the execution of custody or of the imprisonment sentence." Paragraph 2 of this section also imposes upon a member of the prison guard corps the obligation to bear in mind in the course of the execution of his/her duties the honour and dignity of the persons he/she deals with and not to allow any unjustified detriment to these persons and to ensure that an infringement of their rights and freedoms does not exceed the level necessary for attaining the purpose of an intervention or service act. The provisions of the Convention further concern paragraphs 17 to 20 of the Act which provide for the possibility of using devices to exercise coercion, including restrictions on their use.

D. Competent organs

23. Jurisdiction in the matters regulated by the Convention is exercised by police organs, organs of State administration and the civil courts. As regards the codification of the matters embodied in the Convention, the competent body is the Chamber of Deputies of the Parliament of the Czech Republic. Persons mentioned in article 1 of the Convention, notably public officials, must, in exercising their jurisdiction, strictly observe the Czechoslovak legal regulations governing the manner of the exercise of that jurisdiction as well as the conditions under which the different actions can be taken. The honour, reputation and dignity of citizens guaranteed by the Constitution must be respected in all cases. Failure to respect these provisions is qualified under Czech law as abuse of the authority of a public official under section 158 of the Criminal Code which says:

> "Any public official who, acting with the intent to cause damage to another person or to obtain unauthorized benefit for himself or for another person (a) exercises his authority in a manner contrary to the

law, or (b) exceeds his competence or fails to fulfil an obligation stemming from his competence, shall be punished by imprisonment for a term of six months to three years or by prohibition of the activity."

24. Due to the adoption of the new Act No. 283/1993 on the Public Prosecutor's Office replacing the former system of prosecution, the prosecutor's authority in places of custody or imprisonment has been removed. The control and supervision of such places shall be the responsibility of the Prison Department - Section for Supervision of the Enforcement of Custody and Prison Sentences, as an authorized organ of the Ministry of Justice of the Czech Republic organizationally detached from the Prison Guard Service of the Czech Republic and completely independent thereof.

E. Legal remedies

25. The protection of the rights of citizens is secured above all by the courts and by administrative bodies. Every person, regardless of whether he/she is a citizen of the Czech Republic, has the right to invoke such protection. In proceedings, the said bodies are obliged to inform the participants about their rights and duties. In all likelihood, the scope of remedies for the legal protection of the population of the Czech Republic shall be supplemented after the establishment of the currently envisaged administrative judiciary in the territory of the State. A system of administrative judiciary has been implemented since 1 January 1992 on the basis of Act No. 519/1991 and what remains is to establish the Supreme Administrative Court. Further guarantees of the lawfulness of proceedings stem from the supervisory functions of authorities and control bodies and, last but not least, from the norms of the right to petition based on article 18, paragraph 1, of the Charter of Fundamental Rights and Freedoms and from the right to defence, and, if need be, the right to legal representation in criminal, civil or administrative matters.

26. Article 18, paragraph 1, of the Charter of Fundamental Rights and Freedoms reads:

> "The right to petition is guaranteed; every person, by himself or herself or together with other persons, has the right to address State organs or local authorities with requests, proposals or complaints in the matters of public or common interest."

27. A person who is of the opinion that he has been subjected to torture or to other similar treatment is entitled, according to the nature of the detriment caused, to lodge a complaint under section 158 of the Code of Criminal Procedure under which the prosecutor, the investigator and the police organ have the duty to receive reports on criminal offences and to process them as expeditiously as possible. The investigator and the police organ are obliged to take all the necessary measures to disclose all the criminal offences and to identify the offenders; they are also duty-bound to take the necessary measures for the prevention of criminal activity. In order to verify reports indicating that a criminal offence has been committed or that there is another motive for a criminal prosecution, the investigator and the police organ take measures to obtain the essential information and the necessary explanations and investigate and secure evidence. If the

established facts attest that a criminal offence has been committed, criminal prosecution shall be initiated without delay. The special provision concerning this duty is included in section 4 of Act No. 283/1993 on public prosecution.

28. If, through an unlawful action by public officials or other official persons, detriment has been caused to a person, the injured party is entitled to compensation for the damage caused due to incorrect official action and/or to an unlawful decision. The claim for damages is addressed directly to the State (Act No. 58/1969, on responsibility of the State for damage caused by a decision of a State body or by its incorrect official action).

29. Further provisions on compensation are contained in Act No. 119/1990, on judicial rehabilitation; under this Act compensation is provided, inter alia, in those cases where incorrect decisions have been taken as a result of acts defined in the Convention. Section 14, paragraph 1 (b) of the Act says:

> "When a court finds in review proceedings that the decision under review is faulty, notably in those cases when flagrant violations of the procedural regulations were committed in the former proceedings, especially when force or other means were used to extort a confession out of a person, it revokes the decision as a whole or that part thereof which is faulty."

30. A draft act on the establishment of the institution of ombudsman in the Czech Republic passed through the first round of interdepartmental debate in 1993 and at present the comments are being processed and the text redrafted. The opinions of the professional public on the need for such an institution are, however, often conflicting. The principal task of the ombudsman should be to improve the system of protection of the rights of citizens against unjustified action by administrative organs. The chief argument for the establishment of the institution is the increase of administrative machinery of the State and the ensuing higher probability of an increase in conflicts between citizens and the State. The main supporters of the act are the representatives of opposition parties and non-governmental human rights organizations; the establishment of the institution is also supported by the Office of the President of the Czech Republic. On the other hand, the institution has no tradition in the Czech Republic and can be opposed by arguing that human rights must be guaranteed above all by the judiciary.

F. Conclusions

31. On the basis of the available sources of information (regular daily reports by the prison guard corps of the Czech Republic to the Minister of Justice of the Czech Republic, monthly reports by the General Directorate of the prison guard corps on exceptional events in the prison guard corps' service and records of the prosecutor's periodical inspections of the prisons to verify respect for the laws inside them), no case of torture or other situation covered by the Convention has been disclosed by the Public Prosecutor of the Czech Republic. No complaint was lodged by citizens or prisoners in connection with any breach of the provisions of the Convention.

32. Official statistics show that military health facilities were to undertake medical examinations or other treatment of persons in custody in 10 cases and none of the cases involved the consequences of maltreatment or symptoms of torture. From 1 January to 14 August 1993, no person was convicted of the criminal acts covered by article 1 of the Convention.

33. Individual complaints lodged by prisoners, i.e. persons who are in the greatest danger of becoming victims of acts covered by the definition of torture, are also dealt with by non-governmental organizations. The most common complaint is that there is no valid reason for custody. There have also been complaints concerning the placement of prisoners with a different sexual orientation in common cells and concerning the slow processing of complaints. However, the data supplied by independent organizations at present fail to disclose the occurrence of any cases of torture or other acts defined in article 1 of the Convention in the territory of the Czech Republic.

II. INFORMATION RELATING TO THE INDIVIDUAL ARTICLES OF PART I OF THE CONVENTION

Article 2

Paragraph 1

34. As has already been said above, Czech legislation has many effective instruments preventing the occurrence of cases of torture in the territory of the Czech Republic. The basis is provided by the above-mentioned article 7, paragraph 2, of the Charter of Fundamental Rights and Freedoms.

35. The Act on the police does not prohibit torture explicitly (the explicit prohibition is contained in the Charter of Fundamental Rights and Freedoms and in the Criminal Code), but it nevertheless contains sufficient legal instruments ensuring compliance with the Convention, e.g. it stipulates the duty of a police officer to respect the honour and dignity of persons. In the execution of an official measure or act, no unjustified harm may be caused to persons and no intervention in the rights of persons may exceed the limits necessary to achieve the purpose of the official measure or act. Moreover, there is a constitutional precondition that a policeman as a representative of the State may apply State authority only in cases and within the limits given by law and in a way stipulated by law.

Paragraph 2

36. The Czechoslovak legal system does not permit any exceptions from the prohibition of the use of torture and other similar treatment or punishment under extraordinary circumstances. This prohibition is absolute and unconditional in the whole territory and under any circumstances.

Paragraph 3

37. The principle that an order by a superior can in no way justify torture and thus free the offender of criminal responsibility is expressly formulated in the Act on the official status of police officers, which stipulates that:

(a) Under section 27, in case there is a well-grounded suspicion that a police officer has violated his/her official duties in an exceptionally serious manner or that he/she has committed a criminal offence (e.g. he is suspected of torture or inhuman or degrading treatment), the performance of his/her official function can be suspended temporarily by the decision of an official functionary;

(b) Under section 28, a police officer has the duty to notify his/her superior in case he/she believes that the superior's order is not in compliance with a generally binding legal provision. A police officer has the duty to refuse to obey his/her superior's order in case he/she would commit a criminal offence by obeying it and to notify a higher-ranking superior without unreasonable delay.

Article 3

38. Section 379, paragraph 1, of the Code of Criminal Procedure says:

> "1. The public prosecutor to whom the Ministry of Justice or the Prosecutor General have referred the application of a foreign State for extradition, or who has learned of a crime for which a foreign State may ask for the extradition, shall hold a preliminary investigation. The purpose of the preliminary investigation shall be to determine whether there exist conditions for the extradition, in particular whether the crime involved is punishable under the law of both States and constitutes an extraditable crime, whether its punishability has become statute-barred, and whether or not the offender is a Czech citizen.
>
> "2. In extradition proceedings the person whose extradition is being considered must have a legal adviser.
>
> "3. The public prosecutor shall hear such person and advise him of the contents of the application of extradition. If such person presents facts which disprove the suspicion and in support offers evidence which may be examined without considerable delay, the preliminary investigation shall also apply to such evidence."

39. Upon termination of the preliminary investigation the Regional Court decides, on the basis of the motion of the prosecutor, whether the extradition is admissible and submits the matter to the Ministry of Justice. Extradition is permitted by the Minister of Justice only after the Regional Court has ruled that the extradition is admissible. Should the Minister of Justice have any doubts as to the correctness of the ruling of the Regional Court, he can submit the matter to the Supreme Court for re-examination of the ruling.

40. In the process of deciding on extradition, the admissibility of extradition is always examined in the light of pertinent international agreements, i.e. including the Convention.

41. As concerns the prohibition of expulsion or refoulement, the obligation is regulated above all by sections 16 to 18 of the Act No. 123/1992 on the stay of aliens in the territory of the Czech Republic. According to the provisions of section 18, an alien cannot be expelled to a State where his

life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion. This does not apply if an alien is posing a threat to the security of the State or has been convicted of a particularly serious criminal offence. An alien cannot be expelled to a State which claims his extradition on account of a criminal offence for which the law of the State stipulates capital punishment.

42. Provisions regulating the conditions of extradition or return of aliens are embodied in Act No. 498/1990 on refugees, as amended by Act No. 317/1993. According to section 17 of the Act, an applicant for refugee status or a refugee cannot be extradited or returned to the country where his life or freedom would be endangered on account of his race, religion, nationality, membership of a particular social group or political opinion. This does not apply if a refugee is posing a threat to the security of the State or has been convicted of a particularly serious criminal offence committed intentionally. In such a case the alien may be allowed to seek admission to another State.

43. As far as treaty law on extradition is concerned, there is a generally accepted principle that extradition will not be undertaken if it is contrary to the principles of the legal system or to the public order of the requested party. If both sides are bound by the Convention, this article of the Convention will also be applied in their mutual relations.

Article 4

44. As has already been mentioned above (see para. 11), an amendment to the Criminal Code, containing a new definition of the criminal offence of "torture and other inhuman or cruel treatment" has been adopted as section 259a of the Criminal Code.

45. Acts described in article 1 of the Convention may be covered by the definition in section 158 of the Criminal Code (abuse of the authority of a public official), and possibly also by the definitions under section 196, paragraph 2, of the Criminal Code (violence against a group of residents and against individuals), sections 221 and 222 of the Criminal Code (health injury), section 231 of the Criminal Code (restriction of personal freedom) or section 235 of the Criminal Code (extortion).

46. The term "public official" means an elected official or other responsible employee of a State or local authority, court of justice or other State organ or a member of the armed forces or armed corps performing his/her tasks on behalf of the society and the State and exercising the authority bestowed upon him for the purpose of the performance of the tasks. The criminal responsibility of a public official depends on whether the crime in question was committed in connection with his/her authority and responsibility (sect. 89, para. 9, of the Criminal Code).

47. The term "severe injury to health" means a serious illness or other damage to a person's health caused by mutilation, disfigurement, damage of a vital organ or loss or considerable weakening of the functioning of a sensory organ. A severe injury to health may also be a long-term disorder (sect. 89, para. 7, of the Criminal Code).

48. Whoever believes that he/she has been victim of torture or other cruel, inhuman or degrading treatment or punishment may report the fact to a prosecutor, an investigator or a police organ, who have the duty to accept the report (sect. 158, para. 1, of the Criminal Code). The public prosecutor is obliged by law to prosecute all criminal offences reported to him; exceptions are admissible only in cases stipulated by law (e.g. prescription) or by a promulgated international treaty (sect. 2, para. 3, of the Criminal Code).

49. Under Czech criminal law an attempt to commit the crime of complicity or participation in a criminal offence is equally as punishable as the criminal offence itself. Section 8, paragraph 2, of the Criminal Code states: "The attempt to commit a crime shall be punishable by the penalty provided for the committed crime."

50. Section 9, paragraph 2, of the Criminal Code states: "If a crime was committed by the joint action of two or more persons, every one of them shall be criminally liable as if he alone had committed the crime (accomplices)."

51. Section 10, paragraph 2, of the Criminal Code states: "The criminal responsibility and punishability of a participant in a criminal offence shall be governed by the provisions on criminal responsibility and punishability of the offender, unless the present Code provides otherwise."

Article 5

52. The provisions of paragraph 1 (a) find their expression in section 17, paragraph 3 of the Criminal Code as amended by Act No. 290/1993, altering and amending the Criminal Code. The provisions extend the applicability of the Act to cases of criminal offences committed on board a vessel or aircraft registered in the Czech Republic outside the territory of the State: "Czech law shall be applied also to determine the punishability of an act committed on board a vessel or aircraft registered in the Czech Republic."

53. The provision of paragraph 1 (b) is contained in section 18 of the Criminal Code: "Czech law shall be applied to determine the punishability of an act committed abroad by a Czech citizen or stateless resident of the Republic."

54. The provisions of paragraph 1 (c) have found their expression in section 20a, paragraph 1, of the Criminal Code: "Czech law shall also be applied to determine the punishability of an act when this is provided by a promulgated international treaty by which the Czech Republic is bound.".

55. Czech legislation covers paragraph 2 of this article first of all by the provision of section 20, paragraph 1, of the Criminal Code:

> "Czech law shall also be applied to determine the punishability of an act committed abroad by an alien or a stateless person who is not a resident of the Republic, if:
>
> (a) the act is also punishable under the law in force in the territory where it was committed; and

(b) the offender is apprehended on the territory of the Republic and is not extradited to a foreign State for criminal prosecution.".

56. This provision of the Convention is also reflected in section 20a, paragraph 1, of the Criminal Code.

Article 6

57. In this article, the Convention proceeds from the principle of aut dedere aut judicare which is established in the Czech legal system. The State takes a person suspected of having committed torture into custody even if that person will not be prosecuted in the Czech Republic but will be extradited for prosecution in another State.

58. In accordance with the above-mentioned principle of aut dedere aut judicare, reference can also be made to the provision of section 381 of the Code of Criminal Procedure, which relates to the so-called extradition custody to which the provisions of section 67 of the Code of Criminal Procedure do not apply. These provisions make it possible to take into custody a suspect whose extradition may be requested by another State even before the application for extradition has been submitted:

"(1) The President of the Senate of the Regional Court at the instance of the Public Prosecutor conducting the preliminary investigation may take the person whose extradition is being considered into custody if it is necessary for preventing the escape of such person.

(2) If the extradition is found admissible, the Regional Court shall take the person whose extradition is being considered into custody, in case the President of the Senate has not done so according to paragraph 1. In doing so, the court shall not be bound by the grounds for a custody as specified in section 67.

(3) If extradition is not found admissible or if the Minister of Justice orders so, the arrangements shall be made immediately for the person to be released from custody.".

59. The investigation to ascertain the fact whether the said persons have committed the criminal offence stated in article 4 of the Convention is governed, first of all, by the provision of section 160 of the Code of Criminal Procedure, under which the investigator is obliged to initiate criminal prosecution without delay, if the established facts indicate that a criminal offence has been committed. During the investigation the investigator is duty-bound to proceed in such a manner as to clarify as speedily and as completely as possible all the facts needed for the consideration of the case. Thus, the Code of Criminal Procedure provides adequate guarantees for the implementation of paragraph 2. Apart from that, the observance of the law throughout the entire proceedings is supervised by a prosecutor who is entitled, inter alia, to issue binding instructions to the investigators, including to carry out individual acts of investigation, etc.

60. As concerns the application of paragraph 3 of article 6, in the criminal prosecution of foreign nationals account is taken throughout the proceedings

of the provisions of relevant bilateral consular conventions or the Vienna Convention on Diplomatic Relations. The provision of article 36 of that Convention, covering communications and contacts of consular officials of the sending State with its nationals, has been incorporated into Czech legislation.

61. In case an accused alien in custody applies for a consular visit by a representative of his/her home country, the application is granted. Similarly, an application by a diplomatic mission of the pertinent State for a consular visit to an accused national is also granted. Only in the case where there is risk of a criminal act being committed through collusion is the organ in charge of the criminal proceedings notified of the application for a consular visit, upon which it shall take the necessary steps within the limits of its jurisdiction.

62. To ensure the application of paragraph 4 is merely a matter of organizational measures. Similar provisions are included in bilateral consular agreements between the Czech Republic and other States and also in the Instructions of the Ministry of Justice of 15 November 1982, No. 1900/1982.

Article 7

63. The provision of paragraph 1 of article 7 corresponds in the Czech legal system with section 2, paragraph 3, of the Code of Criminal Procedure: "The prosecutor is duty-bound to prosecute all criminal offences of which he has learned; exceptions are admissible only under the law or under a promulgated international treaty.".

64. These exceptions concern, in particular, persons enjoying privileges and immunities. According to section 11, paragraph 1, of the Code of Criminal Procedure, as amended, penal prosecution is not admissible in some other cases, which are as follows:

(a) If it is so ordered by the President of the Republic in pursuing his right to grant pardon or amnesty;

(b) If the prosecution has become prescribed;

(c) If it involves a person who is exempt from the jurisdiction of the organs acting in criminal proceedings, or a person who may be prosecuted only with special authorization under the law, and such authorization has not been issued by the respective organ;

(d) If it involves a person who is not criminally responsible because he/she is under age;

(e) Against a person who died;

(f) Against a person whose previous prosecution for the same act ended in a judgement issued by a court or was definitively closed provided that such decision has not been voided in the prescribed proceedings;

(g) Against a person who has previously been prosecuted for the same act which prosecution ended in a final decision of another organ authorized to prosecute criminal offences, provided that such decision has not been voided in the prescribed proceedings.

65. The provision of paragraph 2 of article 7 corresponds with section 2, paragraph 1, of the Code of Criminal Procedure: "No person may be prosecuted as an accused on any grounds other than those defined by the law or in any manner other than that prescribed by this Code.".

66. In case the accused or convicted alien is in custody or in prison, his/her human and civic rights are observed, including respect for his legal position as an alien.

67. In connection with the provision of paragraph 3, reference is made to the position stated in paragraphs 7 to 22 of this report.

Articles 8 and 9

68. Nothing in the internal legislation prevents the implementation of the obligations resulting from these articles. For this purpose the Czech Republic has concluded treaties on extradition or on legal assistance in criminal matters with a total of 39 States. Furthermore, the Czech Republic does not make extraditions conditional upon the existence of such a treaty and it is also willing to extradite persons on the basis of reciprocity.

Article 10

69. Nothing in the internal legislation of the Czech Republic prevents the full introduction of textbooks and information on the prohibition of torture in the training programme of public officials and other persons connected with custody, interrogation or treatment of persons subject to any type of detention, custody or imprisonment. The Police Academy of the Czech Republic, the Recruitment and Training Department of the Ministry of the Interior of the Czech Republic, the Prison Guard Service of the Czech Republic, etc. are responsible for the fulfilment of the steps.

70. The fulfilment of the obligations following from paragraph 1 falls under the jurisdiction of the police authorities, the Prison Guard Service and the prosecution. These principles have already been mentioned in paragraphs 23 and 24. Officials of the designated section of the Public Prosecutor's Office of the Czech Republic and commanders of the armed forces receive adequate education on this subject during their studies at civil and military schools and their knowledge is continuously further advanced by their superiors.

71. The Code of Criminal Procedure and other regulations covering the role and activities of these bodies deal not only with torture: they also provide that the person and human dignity of the accused and of the convicted person or other persons involved in criminal proceedings should be otherwise respected as well (sect. 52 of the Code of Criminal Procedure).

72. The pertinent organs of the prison guard corps are duty-bound in relation to their own officials as well as to civilian employees to create favourable

conditions for the improvement of their professional standards (sect. 29 of the Act of the Czech National Council No. 186/1992 and sect. 74 of the Labour Code). The new conception of training of prison personnel (the training institute of the Prison Guard Corps of the Czech Republic has been established) meets the above requirement, as the Convention and other legal regulations ensuring the protection of the human and civic rights of persons in custody and prison are included in theoretical and practical education.

73. Under the approved concept, the training of prison personnel is divided into three degrees:

(a) Basic degree: introductory courses, obligatory for each newly recruited officer or civilian employee, divided into five types according to the character of the service to be performed by individual employees (guard and escort service, custody and punishment, court guard, specialists in relations with prisoners and administrative staff);

(b) Continuing degree: qualification and retraining courses;

(c) Extending degree: essentially specialized courses.

Article 11

74. Compliance with the commitments laid down in this article is secured through the controlling and supervising activities of the Ministry of the Interior of the Czech Republic and within the framework of the supervision system of the police of the Czech Republic. In the practical activities of police officers, considerable attention is paid to consistent upholding of the law and to prevention of curtailment of personal freedoms, including the inviolability of the person, as provided by law. In their professional training, regular instruction on the relevant regulations is given, particularly to police officers who are in touch with citizens in connection with criminal and other anti-social activities. The upholding of the law in connection with the limitation of the constitutional right to personal inviolability is emphasized also in internal service acts which regulate in detail the individual fields of service activities.

75. The conditions of custody and treatment of prisoners are subject to constant attention on the part of service organs and organs and organizations participating in the enforcement of custody and prison sentences, as well as on the part of the accused and convicted persons themselves. The accused and convicted persons have a legally guaranteed right to lodge petitions and complaints to the State organs of the Czech Republic and seek remedies through these organs in case their rights have been endangered or violated. Likewise, they are guaranteed the right to address their complaints to the international organs authorized to process the motions concerning the protection of human rights under the international treaties binding for the Czech Republic. The correspondence between the accused and convicted persons and the relevant organs is not in any way restricted (it is mailed without delay and it is not subjected to control).

76. Disclosed negative acts, disciplinary offences, offences or even crimes are dealt with in accordance with valid legal regulations.

Article 12

77. Czech criminal proceedings are based, inter alia, on the principles of legality and "officiality". The principle of legality is set forth in section 2, paragraph 3 of the Code of Criminal Procedure and is mentioned in paragraph 57 above. The principle of "officiality" is first of all laid down in section 2, paragraph 4, which states:

> "Unless the present Code provides otherwise, the organs acting in criminal proceedings shall act ex officio. They shall deal with criminal cases as expeditiously as possible and in doing so shall fully respect the civic rights guaranteed by the Constitution ..."

78. In this context, the duty of the organs acting in criminal proceedings to accept reports on criminal offences according to section 158 of the Code of Criminal Procedure also applies fully to criminal offences committed by means of activities mentioned in articles 1 and 16 of the Convention.

79. Paragraph 5 of section 2 states:

> "The organs acting in criminal proceedings shall act so as to ascertain the factual merits of the case that do not cause any well-founded doubts, to the extent necessary for their decision. They shall clarify with the same care the circumstances speaking in favour as well as against the accused person without waiting for the parties to move. Admission of guilt by the accused shall not relieve the organs acting in criminal proceedings of their duty to review and ascertain by all available means all the circumstances of the case."

80. The term "organs acting in criminal proceedings, means, under section 12, paragraph 1, the court, the public prosecutor, the investigator and the police organ.

81. The prison guard corps generally and consistently ensure an expeditious and impartial investigation of alleged cases of torture with respect to both accused and convicted persons, as well as to officers and civilian employees of the prison guard corps. However, cases of violence (extortion, assault and torture) occur mainly among the prisoners.

82. From 1 January 1992 to 31 July 1993, 541 cases of violence were committed by prisoners, out of which:

(a) Three-hundred and eleven cases were solved by disciplinary measures within the limits of the jurisdiction of the organs of the prison guard corps;

(b) In 157 cases, the initiation of criminal proceedings was proposed;

(c) Forty cases were suspended and submitted for disciplinary proceedings to the organs of the prison guard corps;

(d) In 9 cases, criminal proceedings were initiated; and

(e) Twenty-four cases were submitted to the police of the Czech Republic.

83. If the officers of the prison guard corps, due to their negligence, allow the occurrence of violence among the prisoners, they shall be prosecuted under the pertinent provision of the Code of Criminal Procedure. For example, on 27 April 1993 criminal proceedings against two officers from the Praha-Ruzyně prison who, due to their negligent control, did not discover the symptoms of torture in the case of an accused youngster, were initiated according to section 159, paragraph 1, of the Criminal Law, and on 21 July 1993 criminal proceedings against three officers from the Praha-Pankrác prison who illegally forced an accused person to perform various acts were initiated according to section 158, paragraph 1 (a) and section 237 of the Code of Criminal Procedure.

Article 13

83. As has already been said above, the implementation of the article is ensured by legal provisions of various importance. The provisions concerned are:

(a) Article 18, paragraph 1, of the Charter of Fundamental Rights and Freedoms, guaranteeing the right to petition;

(b) Act No. 85/1990 on the right to petition regulating the right of every person "... to address, himself or jointly with other individuals, to State organs requests, suggestions or complaints in matters of public or other common interest that fall within the jurisdiction of these organs" (sect. 1, para. 1). Section 2 of the Act says that "no person can be hindered in the exercise of his right to petition. No person may suffer detriment because of having exercised this right.";

(c) Section 158, paragraph 1 of the Code of Criminal Procedure states:

> "The prosecutor, the investigator and the police organ are duty-bound to accept reports on facts indicating that a criminal offence has been committed and to process them as expeditiously as possible; in doing so they are obliged to instruct the reporting person of his/her responsibility for intentionally false information and in case the reporting person requests so to inform him/her within a month of the measures taken."

This provision applies naturally also to acts falling under the definition of torture according to article 1 and article 16 of the Convention. Furthermore, section 159, paragraph 4, of the Code of Criminal procedure states that "the dismissal of the case shall always be notified to the reporting person, who may lodge a complaint against it ...";

(d) Section 167 of the Code, which provides for the right of the accused to ask the prosecutor to re-examine the procedures followed by the investigator: "The accused and the aggrieved have the right, at any time in the course of the investigation, to request the prosecutor to put an end to delays in the investigation and defects in the procedure followed by the

investigator. Such request must be submitted to the prosecutor immediately and he must process it without delay. The person who has submitted the requests, must be informed of the result of the re-examination.";

(e) Section 33 of the Code which lists the rights of the accused, especially his/her right to submit motions to seek legal remedies, etc.;

(f) Act No. 292/1993 which amends and supplements Act No. 141/1961 on criminal procedure (Code of Criminal Procedure) by extending section 55 by a new paragraph which reads: "(2) If the witness or a person closely related to him/her is in apparent danger of the detriment to health or other serious danger the first name and the family name of the witness and his/her other personal data shall not be included in the protocol but shall be recorded separately from the records of criminal proceedings and revealed only to the organs acting in the criminal proceedings. A witness shall be instructed about his right to sign the protocol of interrogation by a made-up first name and family name under which he/she shall be recorded thereafter. If the reasons for keeping the personal data of a witness separate cease to exist the data shall be added to the records of the criminal proceedings.".

84. In the practice of the prison guard corps, the right to lodge a complaint (and the corresponding duty to re-examine and solve the matter carefully) is ensured, as is the protection of the complainant and witnesses, e.g. by their relocation to other cells, etc.

85. From 1 January 1992 to 31 July 1993, 2,448 complaints were lodged, of which:

(a) Eighty-five reported physical violence on the part of prison guard officers;

(b) Thirty-four reported incorrect behaviour or physical violence among the accused and convicted;

(c) Forty-eight cases reported unsuitable or offensive statements on the part of prison guard officers.

Careful re-examination of the contents of the lodged complaints disclosed that about 10 per cent of them were well-grounded.

Article 14

86. As has been already stated in paragraphs 16 and 29 in this report, the legal system of the Czech Republic provides for compensation for damage caused to victims of unlawful acts.

87. The right to just and adequate compensation in the meaning of article 14 of the Convention is provided for in Act No. 58/1969 on the responsibility of the State for damage caused by a decision of a State body or by its incorrect official action. Section 18 of that Act says:

"(1) The State is responsible for damage caused within the framework of the fulfilment of the tasks of State organs through improper official procedure followed by persons fulfilling these tasks.

"(2) Nobody can be relieved of the responsibility under paragraph 1".

88. The provisions of the aforementioned Act No. 119/1990 on judicial rehabilitation (see para. 29) fall within this category as well.

Article 15

89. The obligation following from this article is now fully covered by the new provision of section 89, paragraph 3, of the Code of Criminal Procedure: "Evidence obtained through unlawful coercion or threat of such coercion shall not be used in proceedings except as evidence against the person who has applied such coercion or threat of coercion."

90. In Czech criminal law, the accused has the right, but not the duty, to be called to witness, as provided by section 91, paragraph 1, of the Code of Criminal Procedure:

"The interrogation of the accused person shall be conducted so as to provide the fullest and clearest possible picture of the facts which are important for the criminal proceedings. The accused person shall in no way be forced to be called to witness or to confess, and in the course of the interrogation his person shall be respected. The confession of the accused person shall not relieve the organs acting in criminal proceedings of their duty to examine and verify by all accessible evidence all the facts of the case."

91. The above-mentioned provision is furthermore enhanced by the principle of the proceedings being conducted viva voca, according to which the foregoing interrogation of the accused must be repeated before the court, and by the principle of publicity according to which the main court proceedings must be open to the public. The interrogation of witnesses is conducted in a similar manner with the substantial difference that a witness is, naturally, obliged to testify, unless the law provides explicitly for the right of the witness to deny testimony or unless the law prohibits interrogation. (The latter applies to circumstances that are subject to State secret and to persons who by their deposition would violate the duty of discretion imposed on them by the State.

Article 16

92. The legal system of the Czech Republic and the practice of its application are fully oriented towards protection against all other cases of cruel, inhuman or degrading treatment or punishment which do not fall under the term of torture as defined in article 1 of the Convention. The provisions applying here are similar to those stated in respect of the relevant articles on torture. In particular, the obligations resulting from the provisions of articles 10, 11, 12 and 13 are applied identically.

Concluding note

93. From November 1989 to the end of 1993 when the Criminal Code was amended, the endeavour to ensure consistent compliance with the obligations following from the Convention produced distinct results in the spheres of both legislation and implementation. Its effect was also positive in other spheres, e.g. in organizational and personnel measures within the competent organs, in the effort to ensure greater transparency of their activities and to enhance parliamentary and public supervision over their activities as a result of the freedom of speech in mass media, etc. Since the time the initial report of the Czech and Slovak Federal Republic was presented, the guarantees of political and institutional nature have been further enhanced.